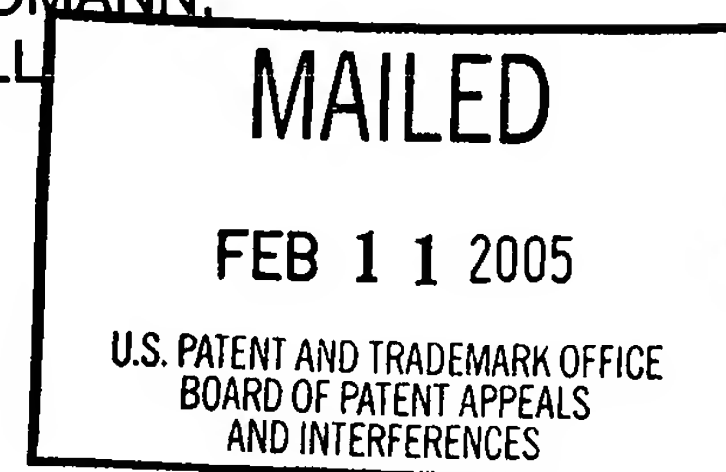


UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte RALF OESTREICHER, MICHELLE HOMANN,
HAROLD LICHTINGER, SCOTT MORELL
and DAN REICH

Application No. 09/810,943



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on November 23, 2004. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

The Examiner's Answer mailed July 13, 2004 is defective because the prior art of record is not stated in the Examiner's Answer. This is needed to process the case.

Furthermore, the Examiner's Answer states that claims 58-60, 65-68 and 73 are objected to and would be allowable if written in independent form including all of the limitations of the base claim and any intervening claims. However, claims 58-60 and 65-

Application No. 09/810,943

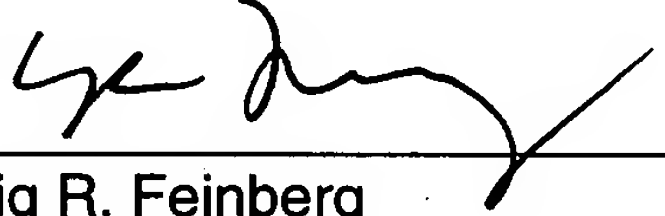
68 are clearly being rejected under prior art. Consequently, to present an objection would be improper since this is not a mere matter of form and, moreover, these claims have a rejection being applied to them. See MPEP §706.1. Also, there does not appear to be presented an rejection under prior art of claim 73 in the Examiner's Answer as implied on page 3, paragraph 3 under the Status of Claims. Claim 73, however, was rejected in the Final Office Action of December 2, 2003, on the same basis as claims 61-63 and 69-72. Clarification and appropriate correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner to 1) list the prior art of record in the Examiner's Answer, 2) clarify the status of claims 58-60, 65-68 and 73 and 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____


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CRF/eld
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